IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.3653/2006

K.Kumaran Petitioner

vs.

1.The State of Tamil Nadu by Secretary to Government
Agricultural Department, Chennai-9

2.The Director of Horticulture and
Plantation Crops, Chepauk, Chennai-5 Respondents

Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorari to call for the records in pursuant to the impugned charge memo issued by the 2nd Respondent in proceedings No.A1/16588/92 dated 8.5.2004 and quash the same.

For Petitioner : Mr.S.M.Subramaniam

For Respondents : Mr.C.Ramesh, AGP

ORDER

1.The Petitioner was working as an Horticulture Officer at Kumbakonam and he was issued with a charge memo dated 8.5.2004, alleging (1) that on 14.5.1987, the watchman, who was on duty on that date, on seeing two unknown persons plucking mangoes in the Mahatma Gandhi Rural Orchard, measuring to an extent of 1303 Acres, obstructed the said two persons, who after attacking the watchman with aruval, cycle chain, ran away and the watchman recovered the said deadly weapons and mangoes and handed over the same to the Petitioner on 15.05.1987, requesting him to take action, but the Petitioner failed to take action, thereby committed the misconduct of dereliction of duty and (2) that the Petitioner did not give any complaint to the police with an intention to help the said two persons, who attacked the watchman with deadly weapons and (3) that the Petitioner acted arbitrarily and failed to collect the tender amounts of Rs.3,31,000/- and Rs.2,01,321/- within the stipulated time from two tenderers by name (1) G.Murugan and (2) S.Natarajan respectively, who purchased mangoes and (4) that the Petitioner also approved another tenderer by name V.Ravi for a sum of Rs.87,000/- thereby caused loss to the tune of Rs.2,34,000/-/. The

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Respondents did not complete the enquiry in respect of the said charges in time and hence, the Petitioner filed WP.No.20261/2004, which was disposed of by this court by order dated 19.7.2004, directing the 1st Respondent therein to complete the disciplinary proceedings initiated against the Petitioner in accordance with law, on or before 30.9.2004 and even after the said order dated 19.7.2004, the 1st Respondent has not passed final orders in the disciplinary proceedings till date. Hence, this Writ Petition has been filed, challenging the said charge memo dated 8.5.2004.

2. The learned counsel for the Petitioner has submitted that the Petitioner was working as the Horticulture Officer in Vallathirakottai during the period from 1985 to 1988 and that he was also in charge of the said Mahatma Gandhi Rural Orchard at Vallathirakottai, measuring an extent of 1303 Acres and that in so far as the said orchard is concerned, he was not direct in charge of the same, however, he directed his subordinates to initiate action for the said theft and that with regard to the other charge of not recovering the bid amount from the two other persons, the same were recovered subsequently, however, the Petitioner during his tenure at the relevant point of time in the said Orchard, has made sincere efforts to recover the said amount and that in any event, the charges issued after lapse of 18 years are untenable in law and that in the earlier Writ Petition as stated above, the Respondents were directed to pass final orders in the disciplinary proceedings on or before 30.9.2004, which was also not complied with and prayed this court to quash the impugned charge memo.

3. The learned counsel for the Petitioner has relied on the decision, to support his above said contentions, rendered in the case of P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board (2005-4-CTC-403), wherein in paragraphs 10 and 15, it was held as under:-

> "10. The very same ground has been specifically raised in this appeal before this court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the Writ Petition.
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> .....
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> 15. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."

4. The learned Additional Government Pleader for the Respondents has submitted that the Petitioner has filed this Writ Petition on 6.2.206, in which, this court granted interim

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stay on 10.2.2006, while admitting this Writ Petition and the said interim order of stay was in force till the same was vacated by order dated 10.4.2007 and hence, the Respondents were not able to pass any order in the disciplinary proceedings initiated against the Petitioner and that considering the gravity of the incident, the charges were rightly framed by the Respondents and prayed for dismissal of this Writ Petition.

5. This court considered the arguments of the learned counsel on either side and also perused the material records placed

6. The impugned charge memo dated 8.5.2004 was issued by the 2nd Respondent against the Petitioner in respect of the said alleged lapses relating to the period 1987-88. The Apex Court in the above said decision i.e. 2005-4-CTC-403 has held that the inordinate delay in initiating disciplinary proceedings would prejudice the public interest and the interest of the employee. In the case on hand, no explanation was offered by the Respondents for such an inordinate delay.

7. In this context, it is useful to refer the decision rendered by the Apex Court, in the case of State of Pujab and others Vs. Chaman Lal Goyal, reported in 1995-2-SCC-570, wherein it was held in paragraph 9, as under:-

> "9. Now remain the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances.

8. In another decision rendered by the Honourable Supreme Court in the case of State of A.P Vs. N.Radhakrishna (1998-4-SCC-154), it was held in paragraph 19 as under:-

> "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each

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case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

9. In the above said two judgements, the Honourable Supreme Court held that normally the disciplinary proceedings should be allowed to take their course as per the relevant Rules, but then the delay defeats justice, delay cause prejudice to the charged officer unless it can be shown that he is to be blamed for the delay or where there is proper explanation for the delay in conducting disciplinary proceedings. In this case, admittedly, the petitioner has not caused any delay and the inordinate delay of 18 years is not properly explained by the respondents. It is also necessary to mention that earlier the Petitioner has filed a Writ Petition in WP.No.20261/2004, seeking for a direction to the Respondents therein to pass final orders, which was disposed of directing the Respondents to pass final orders in the disciplinary proceedings on or before 30.9.2004, which was not complied with.

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10.In view of the above facts that the charges were belatedly issued and that no valid reasons have been assigned by the Respondents for such an inordinate delay in issuing the charges and that the Respondents failed to comply with the direction of this court passed in the earlier Writ Petition referred to above and when this Court weigh all the said factors both for and against the petitioner, it has to be held that the charges are flimsy in nature, hence, in order to meet the ends of justice, it is absolutely necessary to quash the charges against the petitioner and accordingly, they are quashed.

11.In the result, this Writ Petition is allowed, as prayed for. No costs.

Srcm

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Secretary to Government
State of Tamil Nadu
Agricultural Department, Chennai-9

2.The Director of Horticulture and
Plantation Crops, Chepauk, Chennai-5

+ one cc to Mr. S.M. Subramaniam, Advocate sr no. 35259
+ one cc to the Government Pleader sr no. 35296

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nm(25.06.07)

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